



Department of Education & Training

People and Executive Services

2 Treasury Place
East Melbourne Victoria 3002
Telephone: 03 9637 2000
DX210083

Our Ref: FOI 2019-020

Ms Megan Parolin

By email: foi+request-5217-16de404e@righttoknow.org.au

Dear Ms Parolin

FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION – 2019-020

I refer to your request received by the Department of Education and Training (the Department) for documents under the Freedom of Information Act 1982 (the Act).

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## Your request

1. On 15 January 2019, you sought to access:
  1. *The Victoria School Building Authority's (VSBA's) procurement policy.*
  2. *Procurement documents (including but not limited to, the business case for, request for, and approval of) relating to the hire of a consultant to consider VSBA's workplace culture, bullying or similar.*
  3. *Scope of works provided to the consultant(s) engaged to consider VSBA's workplace culture, bullying or similar ('the consultant').*
  4. *Final reports, presentations or similar documents produced by the consultant.*
  5. *Minutes of meetings which discuss any reports or presentations or findings produced by the consultant.*
  6. *Reports, presentations or other similar materials produced by the consultant or the VSBA relating to the consultant's findings, especially those used when explaining results to staff (for example, that 86 per cent of people interviewed had personally experienced 'disrespectful behaviour').*
  7. *Emails relating to the adoption of any recommendations made by the consultant (if any) or actions to be taken as a result of considering the consultant's activities.*
  8. *formal complaints, review of actions requests or incident reports relating to alleged bullying, unreasonable behaviour or similar psychosocial issues submitted to the OHS Officer or a member of Human Resources, excluding all information that would allow an individual to be identified.*
2. On 22 January 2019, the FOI Unit wrote to you advising that your request would be likely to constitute an unreasonable diversion of resources in accordance with section 25A(1)(a) of the Act. On 23 January 2019, you agreed to vary your request to the following:
  1. *Procurement documents (including the business case, request and approval) for the hire of Converge International for a 'Workplace Wellbeing Assessment' of the Victorian Schools Building Authority (VSBA)*
  2. *Summary Assessment Report prepared by Converge International for the VSBA and other supplementary reports prepared by Converge International (if any – please indicate)*
  3. *Responses to the online survey (if any – please indicate) completed as part of the Workplace Wellbeing Assessment, with personally identifying information considered out of scope OR if this would attract section 25A of the FOI Act, aggregate data from the online survey (if any – please indicate)*
  4. *Minutes of meetings and emails from Human Resources, legal or executive staff which discuss the findings of Converge International's Workplace Wellbeing Assessment, particularly about:*
    - a. *Identified psychosocial risks*
    - b. *Key findings and recommendations made by Convergence International [sic]*
  5. *Copy of the presentation materials used in staff presentations held by Mr Chris Keating to discuss the Workplace Wellbeing Assessment results with VSBA staff, for example on 16 November 2018 at the Treasury Theatre.*
  6. *Formal complaints, review of actions request or incident reports related to alleged bullying or similar behaviour between VSBA employees submitted during 2016, 2017 and 2018 to the OHS Officer or a member of Human Resources, excluding all information that would allow an individual to be identified.*

### *The timeframe applying to your request*

3. The FOI Unit provided you with a Notice of Charges Decision on 15 February 2019. In that Notice, you were advised that the estimated cost of processing your request would be \$108.38. On 27 March 2019, you accepted the reduction of charges to \$0.00 on the condition that the Department has 60 days to

process your request from the date of acceptance, as per section 22(6) of the Act. As part of this offer the Department accepted two additional points to your request, as follows:

7. *People Matter Survey results for the VSBA for the last two years*
8. *Comments provided in the free text section of the People Matter Survey by VSBA employees for the last two years, with personally identifying information considered out of scope*

4. The due date for your request is 27 May 2019.

#### **Documents**

5. A thorough and diligent search has been conducted to identify documents held by the Department which are relevant to your request.
6. The FOI Unit caused searches to be undertaken to identify documents with the Victorian School Building Authority (**VSBA**) and the People Division.
7. **24** documents (totalling **229** pages) were identified which are relevant to your request.
8. Regarding point 8, comments are not provided at a group level, only at a Departmental level.

#### **Decision and reasons for decision**

##### *Authority to make this decision*

9. I am an officer authorised by the Secretary of the Department under section 26(1) of the Act to make decisions in relation to FOI requests on behalf of the Department.

##### *Material taken into account*

10. I have taken the following material into account in making my decision:
  - the content and nature of the documents that fall within the scope of your request;
  - the Act (specifically sections 3, 13, 16, 30, 33, 34 and 35); and
  - the views of a third party consulted by the Department.

##### *Decision*

11. I have decided:
  - **to grant access in full to 2 documents.**
  - **to grant access in part to 7 documents** with irrelevant matter deleted under section 25 and exempt matter redacted under sections 30 (internal working documents), 33 (documents affecting personal privacy), 34 (documents relating to business information, etc.) and 35 (documents containing material obtained in confidence).
  - **to refuse access to 14 documents** under sections 30 (internal working documents), 33 (documents affecting personal privacy), 34 (documents relating to business information, etc.) and 35 (documents containing material obtained in confidence).
12. I found that:
  - no documents that meet the points 4 and 8 of your request exist.
13. A copy of the documents released to you with any applicable redactions are included with this letter. The **attached schedule** provides a description of the documents that fall within the scope of your request, and the access decision in relation to each document.

14. The reasons for my decision to exempt documents in part or in full follow.

### ***Section 30 – Internal working documents***

15. Section 30(1) of the Act provides for the exemption of documents which disclose matters in the nature of advice, opinion or recommendation, or consultation or deliberation that has taken place between officers of an agency, which has been prepared to assist in the deliberative processes involved in the functions of an agency, and where such disclosure would be contrary to the public interest.

16. This exemption has been applied in part to **2** documents and in full to **2** documents. I am satisfied that these documents contain deliberative material consistent with section 30(1) as they provide opinions, recommendations and advice in the process of assessing the Workplace Wellbeing Assessment.

17. Having determined that the documents are deliberative in nature, it is then necessary to determine whether disclosure would be contrary to the public interest.

18. I have identified the following factors in favour of disclosure:

- disclosure would promote the objects of the Act, including to:
  - inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
  - reveal the reason for a government decision and any background or contextual information that informed the decision; and
  - enhance the scrutiny of government decision making.
- disclosure would inform debate on a matter of public importance, including to:
  - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official; and
  - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.

19. I have identified the following factors against disclosure:

- disclosure would be likely to inhibit frankness and candour in the making of communications;
- disclosure of the documents would give merely a part explanation rather than a complete explanation for a particular decision;
- the significance of the document, for example whether it is a draft;
- disclosure would undermine any processes of the agency; and
- disclosure would reasonably be expected to prejudice the management function of an agency.

20. I have considered these factors and determined that the factors against disclosure outweigh the factors in favour of disclosure. Accordingly, I have determined that disclosure of the documents would be contrary to the public interest and are therefore exempt in part and in full in accordance with section 30(1) of the Act.

### ***Section 33 – Documents affecting personal privacy***

21. Section 33(1) of the Act provides that a document is exempt if its release would involve the unreasonable disclosure of information relating to the personal affairs of any person. Section 33(9) of the Act defines personal affairs information to include information that identifies any person or discloses their address or location, or from which any person's identity, address or location can reasonably be determined.

22. This exemption has been applied in part to **7** documents and in full to **12** documents. I am satisfied that these documents contain personal information consistent with section 33(1). The personal information includes names, contact information and other information that may identify individuals.
23. Section 33(2B) of the Act provides that if a document may be exempt under section 33(1), the Department must, where practicable, consult with any affected individuals (or if a person is deceased, that person's next of kin) to seek their views on whether their personal information should be disclosed.
24. Given that consultation would be necessary with many individuals, we determined that consultation would not be practicable in these circumstances.
25. I have determined that, in consideration of all the relevant circumstances, release of information relating to the personal affairs of several individuals would be unreasonable. In making my decision, I have taken into account a number of factors including:
- that disclosure would reasonably be expected to prejudice the protection of an individual's right to privacy, including where:
    - the personal information is that of a Victorian Public Service (**VPS**) employee at or below the rank of VPS Grade 6.
  - that disclosure may cause stress and anxiety for the individuals affected;
  - that disclosure would reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;
  - that disclosure would reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
  - that disclosure would reasonably be expected to harm the interests of an individual or group of individuals.
26. I have considered these factors and determined that the disclosure of the personal information contained in the documents would be unreasonable in these circumstances. Accordingly, I am satisfied that the documents are exempt in part and in full in accordance with section 33(1) of the Act.

***Section 34 – Documents relating to trade secrets etc.***

27. Section 34(1)(b) of the Act provides that a document is exempt if it would disclose information acquired from a business, commercial or financial undertaking and the information relates to matters of a business, commercial or financial nature and the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage
28. This exemption has been applied in full to **4** documents. I am satisfied that these documents contain commercially sensitive information consistent with section 34(1)(b).
29. Section 34(3) of the Act provides that if a document may be exempt under section 34(1), the Department must, where practicable, consult with any affected undertakings to seek their views on whether their business information should be disclosed.
30. We sought the views of an undertaking who indicated that their business information should not be disclosed. The undertaking advised that any publishing of their document outside of those party of their contracted agreement would disclose their intellectual property. This includes methodologies and processes that is generally not available to their competitors and that, if released, would expose them unreasonably to disadvantage. They also expressed concern that any release of their material would affect their integrity as a provider of sensitive services in the market.

31. Accordingly, I am satisfied that the documents are exempt in full in accordance with section 34(1)(b) of the Act.
32. Section 34(4)(a)(ii) of the Act provides that a document is an exempt document if it contains, in the case of an agency engaged in trade or commerce, information of a business, commercial or financial nature, that would, if disclosed, be likely to expose the agency unreasonably to disadvantage.
33. This exemption has also been applied in part to **1** document. I am satisfied that this document contains information of a business, commercial or financial that if disclosed, would cause unreasonable disadvantage to the Department.
34. Accordingly, I am satisfied that the documents are exempt in part and in full in accordance with section 34(1)(b) and section 34(4)(a)(ii) of the Act.

***Section 35 – Documents containing material obtained in confidence***

35. Section 35(1)(b) of the Act provides that a document is exempt if it would divulge any information or matter communicated in confidence by or on behalf of a person or a government, and the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Department to obtain similar information in the future
36. This exemption has been applied in part to **3** documents and in full to **12** documents. I am satisfied that these documents contain material obtained in confidence in accordance with section 35(1)(b).
37. Section 35(1A) of the Act provides that if a document may be exempt under section 35(1), the Department must, where practicable, consult with any affected individuals (or if a person is deceased, that person's next of kin) to seek their views on whether the confidential information should be disclosed.
38. Given that consultation would be necessary with many individuals, we determined that consultation would not be practicable in these circumstances.
39. Accordingly, I am satisfied that the documents are exempt in part and in full in accordance with section 35(1)(b) of the Act

**Your review rights**

40. If you are dissatisfied with my decision, you may apply for review by the Information Commissioner.
41. You must apply in writing within 28 days after you receive this letter, identifying the Department and the decision to be reviewed. You should also provide an explanation of why you disagree with the decision. You may lodge your application by:

email: [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au)  
post: Information Commissioner  
PO Box 24274  
MELBOURNE VIC 3001  
fax: (03) 8684 7588

42. More information about review by the Information Commissioner, including a review application form to assist you in making your application, is available at [www.foicommisioner.vic.gov.au](http://www.foicommisioner.vic.gov.au).

## **Making a complaint**

43. If you are dissatisfied with our handling of your request, you have the right to complain to the Information Commissioner.
44. Your complaint must be in writing, set out the nature of your complaint and must be made within 60 days after you receive this notice of decision.
45. You may lodge your complaint by:
  - email: [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au)
  - post: Information Commissioner  
PO Box 24274  
MELBOURNE VIC 3001
  - fax: (03) 8684 7588
46. More information about complaints to the Information Commissioner, including a form to assist you in making your complaint, is available at [www.foicommissioner.vic.gov.au](http://www.foicommissioner.vic.gov.au).

## **Contacting the Department regarding your decision**

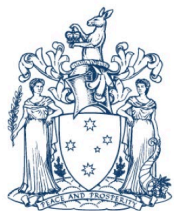
47. If you wish to discuss this decision, please contact the FOI Unit on (03) 7022 0078 or by email at [foi@edumail.vic.gov.au](mailto:foi@edumail.vic.gov.au).

Yours sincerely



**Jane Feeney**  
Manager, Freedom of Information

24 May 2019



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DX210083

## FOI 2019-020

### Schedule of documents

Doc no	Date	Pages	Description	Decision on access	Exemption
1	31 August 2018	2	Email chain	Partial access	33(1), 35(1)(b)
2	20 August 2018	15	Converge International Confidential Proposal Workplace Wellbeing Assessment DET VSBA	Exempt in full	33(1), 34(1)(b), 35(1)(b)
3	30 August 2018	4	Email	Partial access	30(1), 33(1), 35(1)(b)
4	30 August 2018	14	Converge International Confidential Proposal Workplace Wellbeing Assessment DET VSBA Stage Two	Exempt in full	33(1), 34(1)(b), 35(1)(b)
5	30 August 2018	2	Email	Partial access	33(1)
6	28 August 2018	2	Wellbeing Workplace Assessment Communique from Converge International	Partial access	33(1)
7	02 November 2018	3	Email	Partial access	33(1), 34(4)(a)(ii), 35(1)(b)
8	16 November 2018	2	Email	Partial access	30(1), 33(1)
9	N/A	2	Workplace Wellbeing Assessment recommendations draft	Exempt in full	30(1)
10	7 November 2018	44	Converge International Confidential Report	Exempt in full	33(1), 34(1)(b), 35(1)(b)
11	N/A	4	Workplace Wellbeing Assessment recommendations draft	Exempt in full	30(1)
12	N/A	28	Converge International Workplace Wellbeing Assessment VSBA – Feedback Sessions	Exempt in full	33(1), 34(1)(b), 35(1)(b)
13	29 November 2018	16	Workplace Wellbeing Assessment – Next Steps	Partial access	33(1)
14	15 November 2017	2	Email	Exempt in full	33(1), 35(1)(b)





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Doc no	Date	Pages	Description	Decision on access	Exemption
15	9 November 2017	5	Letter	Exempt in full	33(1), 35(1)(b)
16	N/A	28	Correspondence to support complaint letter	Exempt in full	33(1), 35(1)(b)
17	28 September 2017	1	Email	Exempt in full	33(1), 35(1)(b)
18	25 August 2017	1	Letter	Exempt in full	33(1), 35(1)(b)
19	14 September 2017	3	Email	Exempt in full	33(1), 35(1)(b)
20	7 September 2017	2	Email	Exempt in full	33(1), 35(1)(b)
21	6 September 2017	2	Email	Exempt in full	33(1), 35(1)(b)
22		25	Employee Group Report, VSBA - People Matter Survey 2017	Full access	
23		22	Employee Group Report, VSBA - People Matter Survey 2018	Full access	
		<b>229</b>			